

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Andrew Gilbert

Application No: 09/858,091

Filed: May 15, 2001

For: SYSTEMS AND METHODS FOR SHIFTING
BIDS AND OFFERS IN A TRADING INTERFACE

) Art Unit: 3691

) Confirmation No.: 2562

) Examiner: Olabode Akintola

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Claims 1, 3-6, 11, 12, 15, 17-20, 25, 26, 29, 31-34, 39, 40, 43, 45-48, 53 and 54 are pending in this application, of which claims 1, 15, 29 and 43 are independent.

I. The Examiner's failure to show that each and every element of claims 1 and 29 are taught by the prior art, as required for establishing a *prima facie* case of anticipation under 35 U.S.C. §102, results in clear error.

Independent claims 1 and 29 recite, *inter alia*,

... shifting simultaneously, in response to the instruction, the price of each of the selected bids or offers by one of an absolute value and a relative value based on the instruction and value received from the user (emphasis added).

The Examiner alleges that column 15, lines 31-67 of Ojha (USPN 6,598,026) teach this limitation. See Office Action of April 15, 2009 ("Office Action"), p. 3.

But, in actuality, the cited portions of Ojha merely disclose business rules that comprise "a set of actions to be taken when a set of criteria is satisfied." Ojha, col. 15, lines 36-38.

At best, the cited-portions of Ojha describes a business rule action of an “ask price reduction,” in which the “amount by which the list price may be reduced may also be specified as a percentage of the current list price.” *Id.* at col. 15, lines 62-64 (*emphasis added*).

The cite-portions of Ojha merely describe a situation where a *single* list price is reduced by an amount. It does not teach or suggest *simultaneously* shifting a plurality of bids and offers by a value. Thus, the Examiner’s failure to show that each and every element of claims 1 and 29 are taught by the prior art, as required for establishing a *prima facie* case of anticipation under 35 U.S.C. §102, results in clear error.

II. The Examiner’s failure to show all of the limitations of claims 15 and 43, as required for establishing a *prima facie* case of obviousness under 35 U.S.C. § 103(a), results in clear error.

The Examiner’s failure to show *all* of the limitations in independent claims 15 and 43 resulted in clear error. Specifically, claims 15 and 43 recite, *inter alia*,

... *shifting simultaneously*, in response to the instruction, *the size of each of the selected bids or offers* by one of an absolute value and a relative value based on the instruction and value received from the user (*emphasis added*).

Although the Examiner concedes that Ojha fails to teach this limitation, he alleges that column 15, lines 31-67 of Ojha teaches “shifting simultaneously” the price and that Buist (USPN 6,408,282) teaches “shifting the size” of bids. Office Action, p. 7.

As described under subsection I, the cited-portions of Ojha do not, in fact, teach simultaneously shifting a plurality of bids and offers. The cited-portions of Ojha merely disclose reducing the price of a single listing. There is no teaching or suggestion, whatsoever, of simultaneously shifting multiple bids and offers by a value.

Thus, the Examiner’s failure to address *all* of the limitations of claims 15 and 43, as required for establishing a *prima facie* case of obviousness under 35 U.S.C. §103(a) results in clear error.

Respectfully submitted,

Date: August 14, 2009

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